IN THE HIGH COURT OF PUNJAB & HARYAN AT CHANDIGRH

S.A.O.33 of 2000
Date of decision: November 1,2006

Gurdawara Shri Kalyan Sir Amritsar V. Municipal Committee and others

CORAM: HON'BLE MR.JUSTICE VINEY MITTAL

Present: Shri Sanjiv Gupta, Advocate, for the appellant.
Shri Mahavir Sandhu,Advocate for respondent No.1.
Shri H.S.Hooda,Sr.Advocate with Shri Mahavir Singh for respondents No.2 to 5.

Viney Mittal,J,(Oral)

The present appeal has been filed by defendant No.1, Gurudwara Shri Kalyan Sir Amritsar. Challenge is to order dated September 30,2000 passed by the learned Additional District Judge,Sirsa whereby on an application filed by present respondents No.2 to 5 (Subhash Chander etc.) under Order 1 Rule 10 Code of Civil Procedure, the appellate Court has set aside the judgment and decree dated July 29,1998 passed by the trial Court and has remanded the case for a denovo trial.

The plaintiff Municipal Committee, Ellenabad had filed a suit for declaration. It had challenged the judgment and decree dated December 6,1989 passed in a suit titled as Gurudwara Shri Kalyan Sir V. Jojaff Rehmat and others. It was claimed by the plaintiff-Municipal Committee that earlier the land in question was owned by Gram Panchayat, Ellenabad and was possessed by the inhabitants of Ellenabad. Gram Panchayat had sold 16 marlas of

land out of total 5 kanals to various persons and mutations had been entered. According to the Municipal Committee,defendants No.2 and 3 i.e. Jojaff Rehmat and William had suffered the said judgment and decree dated December 6,1989 in favour of Gurudwara Shri Kalyan Sir,defendant No.1, in connivance with each other and without there being any right in either of them. Various other facts were also pleaded by the Municipal Committee in support of the aforesaid prayer.

On a contest by the defendants and after the parties led their evidence, the trial court vide its judgment and decree dated July 29,1998 dismissed the suit filed by the plaintiff. The plaintiff-Municipal Committee,Ellenabad, chose to challenge the aforesaid judgment and decree by way of first appeal before the appellate court.

During the pendency of the first appeal, Subhash Chander and three others (present respondents No. 2 to 5) filed an application under Order 1 Rule 10 of the Code of Civil Procedure for impleading them as party-defendants to the suit. It was maintained by the said applicants that the Gram Panchayat was originally the owner of the property and had carved out 29 shops out of the area and that the applicants had purchased shops by way of registered sale deeds dated August 30,1976.It was also claimed by the applicants that they were in actual physical possession of their respective shops thereafter. According to the applicants since their rights and title to the suit property was likely to be affected, therefore, they were necessary parties to the litigation and, as such, prayed that they be impleaded as defendants.

The Municipal committee, Ellenabad did not oppose the aforesaid prayer of the applicants. However, the original defendants

contested the application and claimed that the said applicants were not necessary parties.

Learned appellate court noticed that although the judgment of the trial court dismissing the suit of the plaintiff-Municipal Committee, Ellenabad would not operate against the rights of the applicants, since they were not parties to the suit, but the said decision would open flood gates for multiple litigation. In these circumstances, the appellate court held that the said applicants were necessary parties. On the basis of the aforesaid observations, the applicants were ordered to be impleaded as party-defendants in the suit and as a result, the judgment and decree of the trial court was set aside and the case was remanded to the trial court for fresh decision. It is in these circumstances that defendant No.1, Gurudwara Shri Kalyan Sir, has approached this court through the present appeal.

During the course of arguments, Shri Sanjiv Gupta, learned counsel appearing for the defendant-appellant, Gurudwara Shri Kalyan Sir, has made a statement that defendant No.1, Gurudwara Shri Kalyan Sir,has no objection if it is declared that the suit filed by the Municipal Committee, Ellenabad shall have no effect on the applicant-respondents, Subhash Chander etc, who claim to have purchased the also suit property from the Gram Panchayat, Ellenabad much prior to the filing of the suit by the Municipal Committee. Shri Gupta has further stated that defendant No.1 has no objection if the aforesaid purchasers are granted a liberty to seek their independent remedies in accordance with law to prove their title and interest in the suit property as claimed by them. In these circumstances Shri Gupta has contended that in view of the aforesaid specific stand taken on behalf of defendant No.1, the

applicant-respondents No.2 to 5 may not be impleaded as parties to the suit and the appellate court be directed to decide the appeal filed by the Municipal Committee,Ellenabad in accordance with law.

The aforesaid statement made by Shri Sanjiv Gupta,learned counsel appearing for the appellant-defendant No.1 fully satisfies Shri H.S.Hooda, learned senior counsel appearing for applicant-respondents No.2 to 5. Shri Hooda states that the judgment and decree of the trial court be treated as not binding upon the applicant-respondents No.2 to 5 and the aforesaid applicant-respondents be granted a liberty to seek their independent remedies to prove their title and interest in the suit property in accordance with law.

Shri M.S.Sandhu, learned counsel appearing for Municipal Committee, Ellenabad obviously has no comments to offer on the rights and title of applicant-respondents No.2 to 5.

In view of the aforesaid statement made by Shri Sanjiv Gupta and duly accepted by Shri H.S.Hooda,learned senior counsel appearing for respondents No.2 to 5, the present appeal is allowed. Order dated September 30,2000 passed by the learned Additional District Judge, Sirsa is set aside. As a result thereof, the application field by Subhash Chander and others under Order 1 Rule 10 of the Code is also dismissed as having been rendered infructuous. As a necessary corollary , the appeal filed by Municipal Committee, Ellenabad against the judgment and decree dated July 29, 1998 passed by the trial Judge (being Civil Appeal No.94 of 1998) is restored back to its original number. The first appellate court is now directed to decide the aforesaid appeal in accordance with law.

It is also directed that the applicant-respondents, Subhash Chander and others would not be bound by the judgment

and decree dated July 29,1998 passed by the trial Judge (whereby the suit of Municipal Committee, Ellenabad had been dismissed) in any manner and the filing of the civil suit by Municipal Committee, Ellenabad shall also not bind them in any manner and they shall be at liberty to seek their independent remedies to prove their title and interest in the suit property, in accordance with law.

The original parties through their learned counsel are directed to appear before the learned Additional District Judge, Sirsa, on December 11,2006.

A copy of the order be given Dasti on payment of usual charges.

November 1,2006 (Viney Mittal)
sks Judge